

February 2, 2024

Honorable George C. Hanks Jr.
United States Courthouse
515 Rusk Street, Room 6202
Houston, Texas 77002

Via Electronic Filing

Re: *James F. b/n/f Christine F. and Michael F. v. Clear Creek Independent School District*,
Civil Action No. 4:23-cv-02063; United States District Court for the Southern District of
Texas, Houston Division – **Parties Request for Conference with Court or Magistrate**

Dear Judge Hanks:

This letter is submitted to the Court jointly by the Plaintiff James F. and the Defendant Clear Creek Independent School District (“District”) (“Parties”). The Parties are not in dispute. The Parties jointly present this letter to the Court as required by Judge Hanks’ Court Procedures at 6.C.5 and 6.E and request a conference with the Court or the Magistrate to discuss the revision of the scheduling order until issues regarding the Plaintiff’s attempt to add evidence to the administrative record are resolved. Counsel for the Plaintiff, Mark Whitburn, and counsel for the Defendant, Janet Horton, met by telephone conference on January 31, 2024, and February 2, 2024 to discuss the issues, and agreed to seek a conference with the Court or the Magistrate to discuss the issues and changes to the scheduling order until pending matters are resolved.

The scheduling order required that motions to admit additional evidence be filed by December 18, 2023. Doc. Nos. 13, 14, and 15 describe the events resulting in the Plaintiff filing a Motion for Leave to File Motion for Admission of Additional Evidence and the District’s request to file its opposition to additional evidence if the Motion for Leave was granted. There has been no ruling on Doc. Nos. 13, 14, and 15.

The scheduling order requires the Parties to file cross-motions for summary judgment based on the administrative record on February 16, 2024, with responses due on March 22, 2024 and replies due on April 5, 2024. If the Motion for Leave is granted, and the Motion for Admission of Additional Evidence is considered filed, the District will oppose the addition of evidence because the District believes the administrative record is extensive, detailed, and sufficient for the Court to determine whether or not the Plaintiff was provided a free appropriate public education.

A party to an appeal of a special education due process hearing has a right to attempt to offer additional evidence. 20 U.S.C. § 1415(i)(2)(C). The right is not absolute. *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754 (5th Cir. 2018). The party opposing the additional evidence should have the opportunity to conduct discovery and file its opposition to the attempt to expand the administrative record. In this case, the discovery could include interrogatories, requests for production of documents, and the deposition of the person whose reports are being offered.

While the Parties can file their cross-motions for summary judgment on February 16, 2024, based on the administrative record currently before the Court, they are not able to predict the outcome of the current dispute regarding the Plaintiff’s attempt to add evidence to the administrative record. Rather than have

to potentially supplement their motions for summary judgment, based on a potential ruling on the additional evidence issue, the Parties believe that a revision of the current dates in the scheduling order until these issues are resolved is logical, practical, will result in clarity regarding the administrative record, and will enhance the judicial efficiency of the court.

The Parties seek a conference with the Court or Magistrate to discuss the following:

- Changes to the current scheduling order;
- Timeline for the District to conduct discovery and file its opposition to the additional evidence if the Court grants the Motion for Leave to File Motion for Admission of Additional Evidence; and
- Timeline for the filing of cross-motions for summary judgment, responses, and replies, after a ruling on the issues of whether additional evidence will become part of the record.

Thank you for the Court's consideration of this request.

Very truly yours,

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